included the narrower terms "custody" and "control". Thus if the prosecution, under the repealed Proclamation, proved custody [characteristic (c)] or control [characteristics (b) and (c)] they were deemed to have proved "possession" in its full meaning "and it shall not be necessary to prove that the person in possession of such thing ..... was aware of the nature ..... of such thing" — viz. characteristic (a).

In the view which I take of the correct interpretation of section 37(d) the learned District Judge misdirected himself upon the burden of proof, and the appeal must be allowed.

Appeal allowed

SIM CHWEE CHUA v. REX.

[App. Cr. Juris. (Murray-Aynsley, C.J.) October 1, 1951]

[Singapore — Magistrate's Appeal No. 111 of 1951]

Dangerous Drugs Ordinance, 1951, ss. 4, 5 and 6 — Possession.

In this case the appellant was charged for importing 174 lbs. of raw opium an offence contrary to section 4(1) and punishable under section 4(2) of the Dangerous Drugs Ordinance, 1951; alternatively for possession of the said opium contrary to sections 4 and 5 and punishable under section 6 of the said Ordinance. The learned District Judge found the appellant guilty on the alternative charge and sentenced him to two and half years rigorous imprisonment. The undisputed facts briefly were as follows: — At about 6.10 a.m. on the 31st May 1951 a party of Revenue Officers chased, stopped and searched a motor sampan with appellant as the sole occuppant, heading for land. In the aft, underneath a loose board they found 52 slabs of black substance, and fore another 27 slabs, which were subsequently proved by the Chief Chemist to be raw opium.

The appellant's defence was that he had no knowledge that there was opium abroad as on 21st May 1951 some ten days before his arrest he had hired the sampan for two weeks to one Tan Hu Chin who had come to him on the afternoon before the day of his arrest and told him that the sampan has broken down outside the breakwaters and that the appellant should carry out the repairs immediately. He stated that at the time of his arrest he was on his way to return the sampan to Tan Hu Chin. Tan Hu Chin gave evidence and stated that he himself had taken delivery of the opium in question from a ship lying outside the breakwaters and concealed it in the sampan when it was discovered at the time of the appellant's arrest.

The learned District Judge found it (i) "exceedingly difficult to believe that the accused had no knowledge that the opium was in the boat", (ii) "hard to believe" Tan who was, he was convinced "a stooge who was prepared to take the rap for money" and (iii) proved that the appellant was fully aware that there was in the sampan opium of which he had the custody and control. The accused was accordingly convicted and sentenced to two years and six months imprisonment.

The appellant appealed on the grounds inter alia (a) that there was no evidence to support the finding of the learned District Judge that the appellant was fully aware that there was opium in the sampan (b) that the learned District Judge did not, as he might have done, find that any of the presumptions contained in section 37 of the Dangerous Drugs Ordinance, 1951, arose and therefore did not consider, as he should then have done, whether the appellant had rebutted such presumption.

Held, that the evidence justified the finding of the District Judge, who had in his Judgment dealt with all relevant matters. Appeal dismissed.

MAGISTRATE'S APPEAL.

M. B. Brash for the appellant.

A. D. Farrell (Crown Counsel) for the Crown.

Murray-Aynsley, C.J. : — In this case I reserved judgment because of the citation of an unreported decision* of Mr. Justice Brown which was not familiar to me. After considering it I agree with the learned Crown Counsel that it has no application here.

I agree with the admirable judgment of the learned District Judge which, I consider, deals with all relevant matters and I do not wish to add anything. The appeal is dismissed.

Appeal dismissed.

TAN WEE HAN & ANOR. v. MEYAPPA CHETTIAR.

[Court of Appeal (Taylor, Spenser Wilkinson and Wilson, JJ.) November 19, 1951]

[F.M. — Civil Appeal No. 26 of 1951]

Debtor and Creditor (Occupation Period) Ordinance, 1948, s. 11 — Construction of s. 11 — Priorities — Distinction between reinstatement and replacement.

Where a mortgagor paid a mortgagee in occupation currency and directed the mortgagee to transfer the mortgage to a third party, in lieu of reconveyance, the mortgage was discharged as regards the original mortgagee but a post-war mortgage of the same property for the amount due on revaluation is a reinstatement, not a replacement, of the security. Appeal dismissed.

APPEAL from the judgment of Jobling, J. reported at p. 75 (1951) Malayan Law Journal.

Ong Huck Lim for appellant No. 1.

R. D. Hume for the respondent.

The facts and arguments appear sufficiently from the judgments of Taylor and Spenser Wilkinson, JJ.

Cur. Adv. Vult.

Taylor, J. : — This is a reinstatement appeal under the Debtor-Creditor Ordinance. The circumstances are a little unusual. Stripped of matters no

* The decision referred to is that of Ho Seng Seng v. Rex reported in this issue at p. 225 — Ed. M.L.J.